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10/657,189

09/09/2003

Joseph E. Legare

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/657,189  
Filing Date: September 09, 2003  
Appellant(s): LEGARE, JOSEPH E.

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Kevin Alan Wolf  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/28/08, 9/2/08 & 1/26/09 appealing from the Office action mailed 7/1/08.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct. In view of arguments in Appeal Brief filed on 7/28/08, 9/2/08 & 1/26/09, claims 1-49, 51 are now indicated as allowed.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,727,383                                      YAMASHITA ET AL.                      3/17/1998

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim 50 is rejected under 35 U.S.C. 102(b) as being anticipated by Yamashita et al. (US Patent 5, 727,383).***

Yamashita discloses a method for diagnosing a condition of a catalyst while compensating for specified engine power changes, comprising the steps of providing a device for electrically controlling engine airflow changes; controlling said device for compensating adverse changes in cylinder intake airflow by use of specified conditions stored in memory, and

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diagnosing the condition of the catalyst (see col. 10, lines 1 +).

**(10) Response to Argument**

**ISSUE 1: Appellants assert that Yamashita does not disclose a method for diagnosing a condition of a catalyst while compensating for engine power changes as claimed in claim 50.**

In response to the above appellants' argument, the Examiner respectfully disagrees. Yamashita discloses a method for diagnosing a condition of a catalyst while compensating for engine power changes (see col. 5, lines 55-67, col. 6, lines 1-9) comprising the steps of:

providing a device for electrically controlling engine air flow changes (see col. 5, lines 15-22); controlling said device for compensating adverse changes in cylinder intake airflow by using of specified conditions stored in memory (see col. 7, lines 1-18) and diagnosing the condition of the catalyst (see col. 10, lines 1-22). Moreover, Appellants assert that Yamashita does not disclose a method for diagnosing a catalyst by detecting catalyst temperature changes.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***(11) Related Proceeding(s) Appendix***

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Diem Tran/

Diem Tran  
Patent Examiner

DT  
June 2, 2009

Conferees

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Art Unit 3748

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